IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

OTHER TAX REF. CIVIL No. 19 of 2003

UNION OF INDIA
V/S
M/S GRASIM INDUSTRIES LTD & ANR

Mr. VK MATHUR & Mr. RISHABH SANCHETI, for the appellant / petitioner

Mr. LR MEHTA, Mr. RAMIT MEHTA, Mr. MANOJ BHANDARI & Mr. AVINASH ACHARYA, for the respondent

Date of Order : 29.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

This reference application under Section 35 H(1) of the Central Excise Act has been filed, praying to decide the following question of law:-

> "Whether the learned Tribunal has not erred in holding that the restriction under Notification No. 14/97-CE (NT) dated 03.05.1997 shall not be applicable to taking MODVAT on RFO, whereas RFO is nothing but LSHS (Low Sulphur Heavy Stock) and hence covered under the ambit of Notification No. 14/97-CE (NT) dated 3rd May, 1997?"

The order under challenge is that of the Learned Customs, Excise and Gold (Control) Appellate Tribunal, Annexure-3, dt. 27.8.2002.

Arguing the reference it was contended, that the

learned Asst. Commissioner of Excise has passed a detailed order, and has come to the conclusion, that the substance purchased by the respondent, is Low Sulphur Heavy Stock (LSHS), and not Residual Fuel Oil (RFO), and therefore, the levy was rightly raised, treating the substance to be LSHS, and the learned Tribunal was in error in setting aside that order.

On the other hand, learned counsel for the respondent supported the impugned order.

We have considered the submissions, and have gone through the judgments.

In our view, a look at the judgment of the learned Tribunal, Annex.3, shows, that it has based its judgment on various other judgments, including the one in the case of M/s. Camphor & Allied Product Ltd., contained in Final Order No. A/132/2002-NB dt. 28.1.2002, reported in 2002 (147) E.L.T. 600.

Learned counsel for the respondent pointed out, that apart from this judgment in M/s. Camphor & Allied Product Ltd.'s case, in Surya Roshni Ltd. Vs. CCE, Indore, reported in 2002 (100) ECR-162, also, the same view has been taken.

We have gone through these two judgments also, and found, that identical controversy was involved in all these cases, inasmuch as in all these cases the substance was purchased by the Industry, from this very I.O.C.L., Mathura, itself, was found to be RFO, and accordingly the order of the Assessing Officer was set aside.

We have pointedly asked the learned counsel for the petitioner, to inform, as to whether the two judgments, in Camphor & Allied Products Ltd.'s case, and Surya Roshni Ltd.'s case, have been challenged further, or have acquired finality, but then, learned counsel expressed his inability to make any categoric statement.

In our view, the fact does remain, that in the application under Section 35 H, it is not the ground raised by the petitioner either, that those judgments have not correctly decided, or the facts in those cases are different, so as to be not applicable to the present case, or that, these judgments no more hold good. In that view of the matter, since even now the learned counsel for the petitioner is not in a position to inform about the status of these judgments, we have no option but to conclude, that these judgments do hold good.

That being the position, any interference in the case of one industry, would bring about incongruous

situation, inasmuch as, one industry would be entitled to MODVAT Credit to a lesser extent, while the other industries would be entitled to MODVAT credit to a larger extent; apart from the fact, that this would give rise to unnecessary adverse market conditions, qua the respondent industry only, it would bring about discrimination, and the petitioner would stand adversely singled out.

In these circumstances, in our view, it cannot be said, that the question as framed in the petition arises, or in any case is required to be decided.

The reference application is accordingly dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/Sushil/